IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 513 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

INDRASINH @ BHAMARSINH VAGHSING PARMAR

Appearance:

1. Criminal Appeal No. 513 of 1993

MR KC SHAH, APP for Petitioner No. 1

MR RC JANI for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 11/01/2002

CAV JUDGEMENT

1. The State of Gujarat having been aggrieved by the judgment and order of acquittal passed by the Ld. Addl. Sessions Judge, Palanpur in Criminal Appeal No. 4/1992

dated 30/9/1992, has preferred this appeal under the provisions of section 378 of the Code of Criminal Procedure. By the said judgment the Ld. Addl. Sessions Judge, Palanpur has allowed the Criminal Appeal No. 4 of 1992 and has set aside judgment and order of conviction and sentence passed by the Judicial Magistrate First Class at Danta, District Banaskantha dated 21/2/1992 in Criminal Case No. 856/1989 for offences punishable under sections 279 and 304 (A) of the Indian Penal Code (hereinafter referred to as 'the IPC') and under sections 112 and 116 of the Motor Vehicles Act (hereinafter referred to as 'the M.V. Act') against the respondent. The Ld. Magistrate had awarded rigorous imprisonment (RI) for six months and fine of Rs.1,000/-, in default simple imprisonment (SI) for one month for offences under sections 279 of the IPC and RI for 2 years and fine of Rs.2,000/-, in default further RI for 2 months for the offence under section 304(A) of the IPC. No separate sentence was awarded for offences under sections 112 and 166 of the M.V. Act.

2. The case of the prosecution is that on 4/7/1989 residents of village Ratanpur, Taluka Danta, namely Anadiben Hirabhai, Arvind Hira, Dharmiben, Kankuben, Dahiben and Kachrabhai had gone to load bricks in the truck of one Bachubhai Baloch in the morning. They had started from Ratanpur and gone to village Divadi Kaleda. While going to Kaleda from Divadi, the truck was halted by driver Bachubhai at about 9.30 a.m. near the sign board of Ratanpur bus stand. Since Anadiben was to go home she alighted from the truck from the back side and was in the process of crossing the road. Exactly at that moment present respondent namely Indrasinh alias Bhamarsinh Vaghsinh Parmar came from the opposite direction i.e. from Palanpur side driving his jeep taxi bearing registration No. GRW 9769 in the middle of the road. The jeep was being driven in the full speed. The jeep collided with Anadiben and as a result of the which, Anadiben was thrown to a distance of about 8 to 10 ft. The respondent after travelling some distance stopped the the jeep and got down from it. The other occupants of the truck, namely Kachrabhai, Arvindbhai, Dharmiben, etc. got down from the truck and went to Anadiben. During this time respondent escaped from the place driving his vehicle towards Danta side. As a result of accident Anadiben had sustained injuries on face, left leg, stomach and thigh. The mother and elder brother of Anadiben were informed about the accident and thereafter Anadiben was removed to hospital at Danta in the said truck. However, reaching hospital, the Medical Officer on duty after examining Anadiben declared her dead. In

the meanwhile, respondent had approached the police station at Danta alongwith his jeep and had reported the incident to the officer present there. The Police Station Officer, Danta Police Station recorded the first information report and he thereafter visited Government hospital. Since Anadiben had already died, P.S.O. got the post mortem done at the said hospital and arrested the respondent. He thereafter recorded the statements of the witnesses to the incident, drawn inquest panchnama and the panchnama of the scene of offence. On receipt of the post mortem report and the R.T.O. report concerning the offending vehicle and on completion of the investigation, submitted chargesheet against respondent for committing offences u/Ss. 279 and 304 (A) of the IPC and sections 112 and 116 of the M.V. Act. The said chargesheet was submitted in the Court of Ld. Judicial Magistrate First Class at Danta. On receipt of chargesheet, a case being Criminal Case No. 856/1989 was registered against respondent and his plea was recorded. The respondent denied the charge framed against him and claimed to be tried.

3. At the trial the prosecution relied on the oral evidence as well as documentary evidence. The prosecution examined following witnesses at the trial, namely (1) Arvindbhai Hirabhai P.W. 1 at Exh.7, (2) Mahamdbhai Nurabhai P.W. 2 at Exh.8, (3) Dr. Arvindbhai Hargovanbhai Patel P.W.3 at Exh.9, (4) Bachubhai Dariyavkhan Baloch P.W. 4 at Exh.12, (5) Ibrahimkhan Husenkhan Makrani P.W. 5 Exh.13, (6) Isabkhan Umarkhan P.W.6 Exh. 14, (7) Hakimkhan Gulabkhan Pathan P.W.7, Exh.16, (8) Laxmanbhai Hirabhai P.W.8 Exh.20, (9) Kankuben Chelabhai P.W.9 Exh.21, and lastly (10) Chatraji Navaji P.W. 10 Exh.27. The documentary evidence relied on by the prosecution are inquest panchnama, post mortem notes Exh10, panchnama of the offending vehicle Exh.15, panchnama of the scene of offence Exh.17, the F.I.R. at Exh.28, etc. The respondent during his further statement u/S. 313 of the Cr.P.C. was apprised all the circumstances appearing against him in the evidence with a view to offer explanation in his defence. His defence appears to be that of general denial.

4. The Ld. Magistrate after considering the entire evidence on record came to the conclusion that the prosecution had been able to prove beyond reasonable doubt that the respondent had committed offence u/S. 279 of the IPC by driving his vehicle on a public road at full speed and in rash and negligent manner so as to endanger the human life. The Ld. Magistrate also came to the conclusion that the prosecution had been

successful in establishing beyond any reasonable doubt that the respondent had caused the death of Anadiben by driving his vehicle in rash and negligent manner, with full speed and in the process of driving the vehicle in such manner knocked down the deceased and thereby he had committed offence u/S. 304 (A) of the IPC. He also reached to the conclusion that the prosecution had successfully proved that respondent had committed offences u/Ss. 112 and 116 of the M.V. Act. While coming to the aforesaid conclusions, the Ld. Magistrate took into consideration the fact that the autopsy report of Anadiben clearly revealed that the fatal injuries suffered by her could be caused by a vehicle. He also relied on and accepted the evidence of the eye witnesses to hold that while deceased Anadiben was in the process of crossing the road, the respondent knocked her down by his vehicle by driving the same in a rash and negligent manner. On the basis of these conclusions the Ld. Magistrate held the respondent guilty of committing the aforesaid offences and convicted him for the same. He thereafter imposed on him the substantive sentence which has been already described in this judgment in para.1. Vide his judgment and order dated 21/2/1992 the Ld. Magistrate directed that the amount of fine to be paid to mother of Anadiben by way of compensation.

5. The respondent having been aggrieved by the judgment and order of conviction and sentence passed by the Ld. Magistrate dated 21/2/1992, preferred appeal in the Sessions Court which was numbered as Criminal Appeal No. 4/1992. The said appeal came to be heard by the Ld. Addl. Sessions Judge, District Banaskantha at Palanpur. The Ld. Addl. Sessions Judge vide his judgment dated 30/9/1992 allowed the appeal of the respondent and set aside the order of conviction and sentence passed by the Ld. Magistrate dated 21/2/1992 in Criminal Case No. 856/1989 and acquitted him of the offences with which he was charged. The Ld. Appellate Judge also directed that the fine, if paid, to be refunded to the respondent. Hence, the State of Gujarat has approached this Court by way of present appeal.

6. I have heard Mr. K.C. Shah, the Ld. APP appearing on behalf of the State of Gujarat - the appellant and Mr. R.C. Jani, the learned counsel appearing for respondent. Mr. K.C. Shah submitted that the Ld. Addl. Sessions Judge has committed glaring error in allowing the appeal of respondent and setting aside the judgment and order of conviction and sentence passed by the Ld. Magistrate. He took me through the entire record of the case and submitted that the oral

testimony of the eye witnesses clearly show that deceased Anadiben got down from the truck from behind when it halted near the sign board of Ratanpur bus stand and while she was in the process of crossing the road, she was knocked down by the respondent by driving his vehicle in full speed and in rash and negligent manner. According to Mr. Shah the respondent was duty bound to slow down his vehicle while approaching the spot at which the truck was halted and he was duty bound to exercise due care and caution to ascertain that nobody from behind the truck was crossing the road. The respondent having failed to exercise due care and caution was clearly rash and negligent in driving his vehicle and thereby knocking down deceased Anadiben. He was, therefore, guilty of committing offences made punishable u/Ss. 279 and 304 (A) of the IPC as well as offences u/Ss. 112 and 116 of the M.V. Act. Moreover, according to Mr. Shah, the oral evidence of the witnesses was amply corroborated by the evidence of Dr. Arvindbhai and the autopsy report of deceased Anadiben at Exh.10 which clearly establish that Anadiben died as a result of vehicular accident.

7. As against that, Mr. R.C. Jani, the Ld. Counsel for the respondent submitted that the judgment rendered by the Ld. Appellate Judge in Criminal Appeal No. 4 of 1992 was legal and proper and there was no justifying reason to interfere with the same by this Court. According to him, Anadiben was not careful enough while crossing the road to look for any vehicle coming from the opposite direction. She had, therefore, failed to exercise due care which a pedestrian is required to take at the time of crossing the road. He further submitted that the respondent who had found the road clear on his correct side, was not at fault in maintaining the speed at which he drove the vehicle at the relevant time. He submitted that deceased Anadiben all of a sudden from behind of the truck tried to cross the road and at that time she was unfortunately knocked down by the respondent. Therefore, no fault can be found on the part of respondent and this was a pure case of accident wherein the respondent cannot be held liable for committing any offence with which he is charged. He lastly submitted that the appeal had no merit and it deserved to be dismissed.

8. To decide this appeal, it is necessary for me to appreciate the evidence of relevant witnesses examined by prosecution at trial in support of its case. Arvindbhai Hirabhai P.W. 1 at Exh.7 in his examination-in-chief has stated that deceased Anadiben was his sister. The accident in question had taken place about one year and

nine months prior to the date of his giving evidence in the Court. According to this witness, in the morning of the fateful day his sister Anadiben, Dayiben, Kankuben, Dharmiben, etc. had gone to Divadi from Ratanpur for loading bricks in the truck. After loading the truck with bricks they had immediately returned to Ratanpur. The driver of the truck had halted the vehicle on the road near Ratanpur bus stand and the labourers were sitting on the bricks loaded in the truck. As the truck halted, his sister Anadiben alighted from the back side of the truck and was trying to cross the road. The truck halted on the left hand side of the road facing Palanpur. This witness has further stated that at that time one jeep car bearing registration No. 9769 came from the Palanpur direction at a speed of about 70 to 80 Kms. and knocked down his sister while she was crossing the road. After knocking down, the jeep travelled the distance of about 15 ft. from the spot of accident. The witness and others got down from the truck and immediately ran at the place where Anadiben was lying. They found Anadiben dead. According to this witness, the jeep was being driven by respondent Indrasinh, who was identified by him in the Court. Deceased Anadiben was thereafter brought to hospital at Danta in the truck where her autopsy was carried out by the Medical Officer and the dead body was thereafter returned to the witness and others. This witness has stated that when they reached near the jeep, they found that his sister was dragged alongwith the jeep upto the distance of about 15 ft. and ultimately she had come under the rear wheels of the jeep. As soon as they reached near the jeep, the respondent escaped by driving his vehicle towards Danta. This witness has stated that the place of accident was situated on Palanpur Ambaji highway. The road is double track and Ratanpur village is situated just adjoining the road at the place where the incident took place. He has further stated that from the spot of the incident on western direction at a distance of about 200 ft. towards Palanpur there is 3 road junction of Kheralu. From the place of incident the road is straight upto a distance of about 500 to 600 ft. towards Palanpur. He has also stated that one Mr. Gandhi who was also at the relevant time travelling in the said truck had got down from the truck after it was halted and he had gone to the school in the village after crossing the road and he was immediately followed by his sister i.e. the deceased. In the cross-examination by the defence he has stated that Mr. Gandhi was sitting in the cabin of the truck while they were sitting on the bricks loaded in the truck. Mr. Gandhi had alighted from the cabin and had crossed the road from the front side of the truck and had gone to the village which is

situated on the northern side of the road. Since Mr. Gandhi wanted to get down the truck was halted and all the other six labourers were required to go to village Dhandha for unloading the bricks. This witness has further stated that Anadiben had to get down at village Ratanpur and in her place, brother of the witness Govindbhai was required to go to Dhandha from Ratanpur for unloading the bricks. The driver of the truck Bachubhai was already informed about it earlier. He has further stated that since Govindbhai was not standing at the bus stand, his sister Anadiben had gone to the village for calling him. She had got down from the back side of the truck and she had immediately started running towards the village. The attention of this witness was drawn to his earlier statement recorded by the police and he admitted that it was true that he had not stated before the police that the jeep car had approached the spot at a speed of about 70 to 80 Kms. However, this witness states that before the police he had stated that the jeep taxi had approached the spot at full speed. Further in the statement before the police he had stated that as a result of the impact from the front side of the jeep, his sister Anadiben had been thrown at a considerable distance. He has, however, admitted that it was not stated by him before the police that his sister Anadiben was dragged alongwith the jeep car to the distance of about 15 ft. In the cross-examination he has further stated that at the time when Anadiben got down from the truck, other labourers were talking to each other and their attention was drawn only at the time when the impact was there. But at the time of accident no other vehicle was there on the road. This witness has denied the suggestion made by the defence that he was giving false evidence with a view to obtain compensation in the claim case filed by them.

8.1. The second witness Mahmadbhai Nurabhai P.W.2 Exh.8 has stated in his examination-in-chief that at the relevant time he was standing near the bus stand of Ratanpur with his hand lorry and was selling tea. He stated that a truck from the side of Danta loaded with bricks came there and halted in front of his lorry. The truck had halted on its left hand side i.e. correct side. His lorry was stationed on the northern side of the road i.e. towards Ratanpur village. He stated that as the truck halted, from it Anadiben of his village alighted and she started coming towards the village. At that time jeep bearing registration no. 9769 came there at a speed of about 50 to 60 Kms. from Palanpur side and had knocked down Anadiben and thereafter it had travelled to the distance of about 15 ft. and halted there.

Anadiben had died on the spot. He identified the driver of the jeep Indrasinh alias Bhamarsinh, the present respondent, since he belonged to the neighbouring village and was known to the witness. After the passengers from the jeep got down near Ratanpur, he drove his jeep towards Danta. The dead body of Anadiben was thereafter removed to hospital at Danta by them and some of the village people, where her post mortem was carried out and thereafter the dead body was handed over to the relatives. According to this witness, Anadiben was aged about 20 years. In the cross-examination of this witness by the defence, he has stated that at the spot where the incident took place apart from his lorry there are other lorries for selling tea and there is also one restaurant. All the lorries and the hotel are situated towards the village near the road. He has admitted that at the time of incident there was no customer at his lorry. He has admitted that in the police statement he had not stated that the jeep was being driven at speed of about 50 to 60 Kms. He has further denied the suggestion made by the defence that the accident had occurred due to Anadiben's fault and since Anadiben belonged to his village, he was giving false evidence.

8.2. Dr. Arvindbhai H. Patel, Medical Officer, Primary Health Centre at Danta, P.W. 3 Exh.9 examined by the prosecution to prove the injuries sustained by deceased Anadiben in a vehicular accident and she succumbed to those injuries. According to this witness, the death had occurred due to injuries indicated in column nos. 17 and 18 of autopsy report and also the internal corresponding injuries shown in column no.20. The cause of death, in the opinion of this witness, was internal bleeding and due to cessation of functioning of the heart and the process of bleeding. This witness has opined that all the injuries sustained by Anadiben could be caused due to running over by a vehicle. During the course of evidence this witness has also produced post mortem notes which are at Exh.10. In the cross-examination by the defence this witness has stated that it was true that he had not mentioned in the post mortem report in column nos. 17 and 18 that there were marks of wheels. In the post mortem notes at Exh. 10 it has been recorded in the column of opinion as to the cause or probable cause of death as follows :-

"The cause of death is due to cardia respiratory failure as a result of injury over the body (1) causing fracture of the ribs, causing rupture of the ribs and also causing injury to the left lung, causing internal hemorrhage, (2) fracture

of the left lower limb shaft femur bone causing haematoma surrounding it (3) other multiple injuries over other parts of body."

8.3. Bachubhai Dariyavkhan Baloch, the truck driver has been examined as P.W. 4 at Exh.12. According to him Andiben and other labourers were there in the truck from Ratanpur for loading the truck with bricks at Divadi. After loading the truck he had come back with the labourers and he had halted the truck near Ratanpur village as the labourers were required to have their lunch. He was sitting in the driver's cabin and the labourers had alighted from the back side of the truck. According to this witness, he has parked his vehicle towards the extreme left hand side of it. When he heard a loud noise he got down from his vehicle and saw that labourer Anadiben was lying on the road and one jeep had halted little head of her. He again saw that within short time the jeep driver had taken the vehicle towards Danta. This witness however states that he had seen the driver of the offending vehicle and he could identify him as Bhamarsinh, the present respondent. When they have reached near Anadiben, they found that the condition of Anadiben was very serious and there was no chance of her survival. The witness has further stated that the sound which he had heard was that of the offending vehicle colliding with deceased Anadiben. He knew the respondent because the respondent belonged to village Danta Gangva. This witness has clearly stated that the road running towards Palanpur is very straight and to the distance of about 8 Kms. upto village Motasada the road is very straight. He has further stated that from the spot of incident towards Danta at the distance of about 100 ft. there is a petrol pump. He has stated that he would not be able to say the speed of the jeep car as he was at that time talking with other inmates of the truck. In the cross-examination by the defence this witness has stated that there is cross road of Gandhinagar at the distance of 100 to 150 ft. from the spot of the accident towards eastern side. According to this witness, one could not see the village Motasada from spot at which the truck was halted. However, the road could be seen upto a distance of about 2 Kms.

8.4. Ibrahim Husenkhan Makrani P.W.5 Exh. 13 states that he own cabin for selling tea, pan and budges. He has further stated that Ratanpur bus stand is situated just opposite his cabin and at the bus stand the buses, jeeps, truck, etc. are being halted and the people are boarding and getting down from these vehicles at the bus stand. According to this witness, the incident had taken

place at about one and half years before the date of giving evidence in the Court. He was standing at the bus stand as he wants to go to Palanpur. At about 11.00 a.m. Bachubhai arrived at with his truck and halted it near the bus stand. The truck was halted on the left hand side of the road. There were about 5 to 6 labourers sitting on the bricks loaded in the truck. He has stated that 2 labourers got down from the truck and one of them was deceased Anadiben. She was proceeding towards the village and at that time jeep taxi bearing No. 4369 came at a speed of about 60 to 65 Kms. per hour and collided with Anadiben, as a result of which Anadiben has been tossed to a distance of about 15 to 20 ft. in front of the jeep car. Thereafter, the said jeep car had over run her and after travelling about distance of 20 ft. it has stopped. After the passengers from the jeep care got down the jeep was drove towards Danta. He had seen the present respondent driving the jeep. According to this witness, when he reached Anadiben he saw that there was hardly any chance of her survival. This witness has stated that the road towards Palanpur from this spot is straight and wide. He knew the respondent because he was often travelling on this road and stopping at the Ratanpur bus stand. In the cross-examination by the defence, he has stated that the time at which he was standing at the bus stand was stated to be 9.30 a.m., which was not correct. He has stated that he did not know the exact time at which the incident took place, but it was approximately between 11.00 and 11.30 a.m. He has denied the suggestion that he had not stated before the police that the jeep was being driven at the speed of 60 to 65 Kms. per hour. He has also denied that he had no seen the incident. He has stated that he knew Anadiben since she was staying in Ratanpur since last 14 years.

8.5. Isamkhan Umarkhan P.W.6 Exh. 14 who is a panch witness of the panchnama of the jeep car which was drawn at the police station as the jeep was seized by the police and kept at the police station. He has stated that the front glass of the jeep had broken and the number plate of the jeep was bent. In the cross-examination he has denied the suggestion made by the defence that no panchnama of the jeep car was drawn and he at the police station and he had signed the panchnama , which was kept ready by the police. The evidence of this witness is supported by the panchnama at Exh.15, which shows damage caused to the jeep car as a result of the impact on the front side of it. The number plate had bent towards the engine and the black colour of the plate from both the sides had come off. It has also been noted in the panchnama that an effort had been made

to make the number plate straight by exercising considerable force. It also shows that the glass of head light and bulb on the left hand side of the jeep had broken.

8.6. Hakimkhan Gulabkhan P.W.7 Exh.16 states that on inspection of the spot of the incident, he found blood stains on the road as well as pieces of glass and broken pieces of bangles. This witness has not been cross-examined by the defence.

8.7. Laxmanbhai Hirabhai P.W.8 Exh. 20 is an eye witness. He has stated that he was near the truck at the time when the incident took place and he saw the jeep car which approached the spot at the speed of 70 to 80 Kms. and it had dashed withe the deceased Anadiben and Anadiben had been dragged to a distance of about 10 to 15 ft. and after the accident the jeep car was driven towards Danta. According to this witness, the accident was caused by driver Indrasinh who was known to him. In the cross-examination by the defence he has been confronted with his previous statement recorded by the police wherein he had stated that on the previous day he had gone to Mahmadbhai's cabin and his sister Anadiben and brother Arvind and other labourers had gone in the truck of Bachubhai for loading bricks. He has admitted having stated so before the police. However, he has then stated in the cross-examination that he had actually gone for labour alongwith the other labourers. He has denied the suggestion that he was giving false evidence.

8.8. The evidence of Kankuben Chelabhai P.W.9 Exh.29, who is an eye witness, is on the same line as the other eye witnesses.

8.9. Chatraji Navaji P.W.10 Exh. 27 has stated that on 4/7/1989 Head Constable Pursing Mohsing was discharging duty as Police Station Officer from 8.00 hours to 12.00 hours and in his presence the respondent had given the FIR. This witness has produced the original FIR which was duly signed by the respondent as well as Pursing. The FIR has been taken on record and it is exhibited at Exh.28. After the registration of offences, the investigation was handed over to this witness and during the course of the same, he recorded the panchnama, the statement of witnesses and also arrested the respondent. On completion of the investigation and receipt of the post mortem report, he had filed the chargesheet in the concerned Court. In the cross-examination of this witness certain contradictions in the evidence of witness Ibrahim Husenkhan has been

brought on record. He has denied the suggestion made by the defence that during his investigation it has been found that the accident had happened because Anadiben all of sudden tried to cross the road and the accused was not at fault. He has also denied the suggestion that false case against respondent had been filed.

9. Considering the oral as well as documentary evidence on record, it becomes very clear that several labourers including Anadiben had gone to load bricks in the truck of Bachubhai from Ratanpur to village Divadi and after loading the bricks, the truck had returned to Ratanpur and had halted by its driver near the sine board of Ratanpur bus stand on extremely left side of the road i.e. on the correct side. After it had halted one Mr. Gandhi who was sitting in the cabin of the truck had got down and had crossed the road for going to the village Ratanpur. At the same time Anadiben had got down from the back side of the truck and she had immediately followed Mr. Gandhi to cross the road. While he was crossing the road, the respondent, who drove the vehicle at a high speed knocked her down and as a result of the impact, the lady was tossed to a distance of about 10 to 15 ft. and then she was again run over by the same vehicle. It has also come in the evidence that road towards Palanpur from which side i.e. side from which the jeep came is very straight road upto considerable distance and one who approach the spot from the side of Palanpur could see the road from the distance of atleast about 500 to 600 ft. It has also come in the evidence that there are lorries and cabins and restaurant situated on the road side towards village Ratanpur and at the bus stop the vehicles are often being stopped with a view to allow the passengers to get down and the persons intending to travel in those vehicles to board them. In short, it can therefore, be easily inferred that at this spot there is considerable movement of the vehicles as well as the passengers. It has also come in evidence that respondent had been plying his vehicle since long on this road since he himself was using his jeep car as taxi. IN this background of the fact, it was expected from the respondent to be careful while approaching this spot as the spot was known for the movements of passengers on account of a bus stop being there. It is true that in the evidence before the Court it has been stated by the witnesses that at the time when the impact took place except the truck loaded with bricks and parked on its correct side, there was no other vehicle on the road. However, that does not absolve the respondent from his duty as a driver to exercise due care and caution while driving his vehicle, that he should try to

ascertain before crossing the spot that no passenger from the truck is trying to cross the road. Unless and until the respondent slow down his vehicle, he would not be in a position to find out whether there was any likelihood of some body crossing the road all of a sudden. In the instant case the respondent should have been on his guard because it has come in evidence that Mr. Gandhi who was travelling by this truck had got down at the bus stand from the cabin and he had crossed the road from the front side of the road for going to the village. It is, therefore, safely be stated that the respondent who as a driver of the vehicle is supposed to keep his eyes on the road must have noticed him crossing the road from a distance and that should have prompted him to slow down his vehicle with a view to avoid any untoward incident happening in case of some other person alighting from the truck and trying to cross the road all of a sudden. The respondent was required to take little extra care than due as he was unable to see what was happening at the back side of the truck. There is nothing on record to show that either he had slowed down his vehicle or blown horn with a view to give enough warning to a person intending to cross the road. As a responsible driver of a vehicle, which was being plied regularly on the highway, it was expected of him to exercise atleast this much of care. No fault can be found on the part of deceased Anadiben as she was a rustic villager and was hardly having any traffic sense. It is also quite possible that when she must have seen Mr. Gandhi crossing the road, she would have thought that she would also be able to cross it safely. Unfortunately she had tried to cross the road and ultimately knocked down by the rash and negligent driving of the respondent. Moreover, it can be seen from the evidence that defence had not been able to dislodge the version of the eye witnesses regarding the accident. The medical evidence on record also supports the ocular testimony of the eye witnesses. The identity of the respondent as the driver of the offending vehicle is also established beyond any doubt. Further the offending vehicle's panchnama also shows that it had got damage on the front side in as much as the left hand side glass of the head light as well as the bulb were broken and the number plate had bent inwardly towards the engine and the black colour of the number plate on both the ends had come off. Considering the overall view of the prosecution evidence, in my opinion, the prosecution has been able to prove the case against the respondent beyond any reasonable doubt. In the appeal against acquittal, I am entitled to appreciate the entire evidence afresh and if I find that the judgment of acquittal is patently erroneous and not

supported by the prosecution evidence, the same should be set aside. As stated above, the respondent while plying his vehicle at the relevant time was not only rash by driving his vehicle at excessive speed, but also negligent in not exercising due care to avoid any untoward incident taking place. His case, therefore, squarely falls under the offences punishable u/S. 279 as well as u/S. 304 (A) of the IPC.

10. I have carefully gone through the judgment delivered by the lower appellate Court and I have found that the Ld. Addl. Sessions Judge has been mainly influenced by the fact that deceased after alighting from the truck had immediately started crossing the road without making sure that no vehicle was approaching the spot at which she intended to cross the road. In other words according to the Ld. Judge the deceased had failed to take necessary care before crossing the road which had ultimately resulted into the unfortunate accident. The Ld. Judge has, therefore, held that this was a case of pure accident and no negligence could be attributed to the respondent. In my opinion, the view taken by the Ld. Addl. Sessions Judge is not correct. By now it is a well settled position of law that the principle of contributory negligence has no place in criminal law. The discussion above obviously shows that the care and caution which the respondent was required to exercise while driving his vehicle were not duly exercised by him nor did he slow down his vehicle while approaching the place at which the truck was parked on its correct side and for want of these elements there cannot be any hesitation to hold that the respondent was not only negligent but was also rash. The reading of the record of the case shows that there is evidence against the respondent, which is consistent and free from omissions and contradictions and no material has been brought on record for discarding this evidence. In my view, therefore, the Ld. Addl. Sessions Judge was in error in setting aside the judgment and order of conviction and sentence passed by the Ld. Magistrate.

11. As a result of aforesaid discussion, the appeal of the State Government deserves to be allowed and the judgment and order of acquittal passed by the Ld. Addl. Sessions Judge, Banaskantha at Palanpur, in Criminal Appeal No. 4 of 1992 deserve to be set aside.

12. Mr. Jani, Ld. counsel for respondent has submitted that in the event of this Court coming to the conclusion that the respondent was guilty of committing offence with which he was charged, considering the fact

that the incident took place on 4/7/1989 and that respondent has now well settled in life having an employment with the Government, if he is required to be sent to prison to serve the substantive sentence, he would not only lose his job but his family members would also suffer immense hardship. In the circumstances, according to Mr. Jani it would be in the interest of justice to remove the substantive sentence and instead thereof to increase the punishment of fine. Mr. K.C. Shah, Ld. APP has, however, objected to reduction of substantive sentence.

12.1. I am entitled to modify the order of sentence while exercising my powers u/S. 386 of the Cr.P.C.

12.2. Having taken into consideration the facts and circumstances of the case, coupled with the fact that 13 long years have already passed from the date of incident, it will not be proper to impose substantive sentence of imprisonment on the respondent. In my opinion, the ends of justice would meet if instead of substantive sentence of imprisonment imposed by the Ld. Magistrate is replaced by the enhancement of fine. The Ld. Magistrate inall has imposed a fine of Rs.3,000/-. However, the same is hereby enhanced to Rs.15,000/- (Rupees fifteen thousand only). It is further directed that in the event of payment of fine by respondent, Rs.12,000/- out of Rs.15,000/- to be given to the mother of the deceased by the Ld. Magistrate after ensuring that the mother of the deceased is available to receive the compensation. If the mother is not available, then this amount should go to the Government exchequer. In the event of failure on the part of respondent to pay fine within three months from the date of this judgment, the order of sentence passed by the Ld. Magistrate will be restored and the respondent will have to serve the sentence of imprisonment accordingly.

13. With this modification, the present appeal succeeds and the judgment and order of acquittal dated 30/9/1992 passed by the Ld. Addl. Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No. 4 of 1992 are hereby quashed and set aside and the judgment and order of conviction and sentence passed by the Ld. Judicial Magistrate First Class, Danta in Criminal Case No. 856 of 1989 dated 21/2/1992 are hereby restored.

[AKSHAY H. MEHTA, J.]

* Pansala.